

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
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IN THE MATTER OF THE INVESTIGATION)
ON THE COMMISSION'S OWN MOTION, UNDER)
INDIANA CODE § 8-1-2-72, INTO ANY AND ALL)
MATTERS RELATING TO THE COMMISSION'S)
MIRRORING POLICY ARTICULATED IN)
CAUSE NO. 40785 AND THE EFFECT OF THE)
FCC'S MAG ORDER ON SUCH POLICY,)
ACCESS CHARGE REFORM, UNIVERSAL)
SERVICE REFORM, AND HIGH COST OR)
UNIVERSAL SERVICE FUNDING)
MECHANISMS RELATIVE TO TELEPHONE)
AND TELECOMMUNICATIONS SERVICES)
WITHIN THE STATE OF INDIANA)

FILED

MAR 05 2003

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 42144

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") made the following entry in this matter:

On February 27, 2003, the Smithville Telephone Company, Inc., RTC Communications d/b/a Rochester Telephone Company, and Daviess-Martin County Rural Telephone Corporation, ("Non-Settling Parties") filed a *Request for Leave to File Supplemental Responsive Testimony and Notice of Filing of Testimony* ("Request for Leave").

On February 28, 2003, Nextel West, Corp., U.S. Cellular Corporation, T-Mobile USA, Inc., Nextel Partners, Inc., and Celco Partnership d/b/a Verizon Wireless (collectively, the "Wireless Carriers") filed a *Response of Wireless Carriers to the February 27, 2003 Request for Leave to File Reply Testimony Filed by Smithville Telephone Company, Inc, RTC Communications d/b/a Rochester Telephone Company and Daviess-Martin County Rural Telephone Corporation* ("Response").

In their Request for Leave, the Non-Settling Parties indicate that the February 14, 2003, responsive testimony of certain other non-settling parties including the testimony of Pamela Sherwood, (Time Warner Telecom of Indiana, LP); Terry R. Dye (Verizon North Inc., and Contel of the South, Inc., d/b/a Verizon North Systems); and Gary J. Ball (U.S. Cellular Corporation, T-Mobile USA, Inc., Nextel Partners, Inc., Nextel West Corp., Celco Partnership d/b/a Verizon Wireless), included testimony that went beyond the scope of the Settlement Agreement filed in this Cause. In response to this concern, the Non-Settling Parties filed their Request for Leave, along with additional prefiled testimony of Ms. Sandra S. Ibaugh.

In their Response, the Wireless Carriers indicate that the Request for Leave is based on a false premise as it states the testimonies of the Wireless Carriers, and certain other non-settling parties, "went beyond the Settlement agreement requesting additional action by the Commission prior to establishing a Indiana Universal Service Fund." (Request for Leave at 1). The Wireless Carriers go on to indicate that on December 31, 2002, the Wireless Carriers filed a Motion in which they requested that the Presiding Officers clarify the procedural schedule set forth in their December 17, 2002 Docket Entry, as it relates to the appropriate scope of the testimony that could be filed by parties that do not support the Settlement Agreement. In response to the Wireless Carriers' Motion, the Presiding Officers issued a Docket Entry on January 21, 2003, which confirmed that the December 17, 2002 Docket Entry "does not limit the ability of any party to fully present any issues that they believe may be relevant to the Commission's consideration of the Settlement Agreement . . . includ[ing] consideration of issues that may support a determination that the Settlement Agreement should be approved, rejected or modified by the Commission . . . testimony to be prefiled on February 14, 2003, may appropriately address all issues that the non-settling parties believe may impact the Commission's consideration of the Settlement Agreement presented in this Cause." (Response at 2, *quoting*, January 21, 2003 Docket Entry).

The Wireless Carriers conclude that the Request for Leave should be denied or, if granted, that the Wireless Carriers and all other non-settling parties, should be granted leave to file reply testimony.


1. **Analysis and Findings of the Presiding Officers.** The December 17, 2002, Docket Entry issued in this Cause established the following procedural schedule: 1) On or before December 20, 2002, the Settling Parties, and any other party that wishes to file testimony in support of the Settlement Agreement, shall prefile their testimony in support of the Settlement Agreement submitted in this Cause; 2) On or before February 14, 2003, any non-settling party may file testimony in response to the prefiled testimony in support of the Settlement Agreement; 3) On or before February 25, 2003, the Settling Parties, and any other party that filed testimony in support of the Settlement Agreement, may prefile testimony in response to the testimony filed on February 14, 2003; 4) An Evidentiary Hearing in this matter is hereby scheduled for March 13, 2003, at 9:30 a.m. EST, in Room TC-10 of the Indiana Government Center South, Indianapolis, Indiana, for purposes of allowing the parties to offer their prefiled testimony with respect to the proposed Settlement Agreement, into the record and to cross-examine each others' respective witnesses. (December 17, 2002 Docket Entry at 4).

The Testimony and Exhibits filed on February 14, 2003, were submitted in accordance with the procedural schedule established by the Presiding Officers. The Reply Testimony of Sandra S. Ibaugh may properly be characterized as cross-answering testimony or sur-rebuttal testimony to the testimony filed on February 14, 2003 by the Wireless Carriers, and certain other non-settling parties. However, the December 17, 2002 Docket Entry does not provide for cross-answering testimony or sur-rebuttal testimony.

While the Non-Settling Parties indicate, in their somewhat belated Request for Leave,¹ that “[a]llowing additional responsive testimony will expedite the formal hearing in this matter and not prejudice any party” (Request for Leave at 2) there is no indication in the motion as to whether the remaining parties to this Cause were contacted in an effort to determine if there were any objections to the Request for Leave.

Based on the foregoing, it does appear that modifying the procedural schedule at this juncture, without good cause having been shown, could only serve to prejudice the remaining parties to this matter. The Presiding Officers find the Response filed by the Wireless Carriers’ to be persuasive and hereby DENY the Non-Settling Parties’ Request for Leave.

IT IS SO ORDERED.



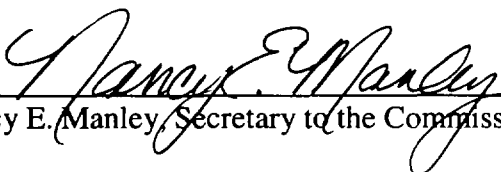
David E. Ziegner, Commissioner



Scott R. Storms, Chief Administrative Law Judge

3/5/03

Date



Nancy E. Manley, Secretary to the Commission

¹ The Non-Settling Parties do not indicate in their Request for Leave, why their request to file additional testimony, in response to testimony filed on February 14, 2003, was not submitted until February 27, 2003, or why a request for leave to file additional testimony could not have been made separately, prior to the submission of the actual additional testimony.